

PUBLIC HEARING

DECEMBER 10, 2014

A public hearing of the Council of the County of Kaua'i was called to order by Mason K. Chock, Chair, Planning Committee, on Wednesday, December 10, 2014, at 8:33 a.m., at the Council Chambers, 4396 Rice Street, Suite 201, Historic County Building, Līhu'e, and the presence of the following was noted:

Honorable Mason K. Chock  
Honorable Ross Kagawa  
Honorable Arryl Kaneshiro  
Honorable KipuKai Kuali'i  
Honorable JoAnn A. Yukimura  
Honorable Mel Rapozo

Excused: Honorable Gary L. Hooser

The Clerk read the notice of the public hearing on the following:

"Bill No. 2545 – A BILL FOR AN ORDINANCE AMENDING SUBSECTIONS 8-15.1(B) AND 8-15.1(D), KAUAI COUNTY CODE 1987, AS AMENDED, RELATING TO ADDITIONAL DWELLING UNIT ON OTHER THAN RESIDENTIALLY ZONED LOTS,"

which was passed on first reading and ordered to print by the Council of the County of Kaua'i on November 5, 2014, and published in The Garden Island newspaper on November 17, 2014.

The following communications were received for the record (*see Bill No. 2545 testimony log*):

- 1) Beardmore, Carol, dated December 7, 2014
- 2) Bishop, LaVerne, dated December 9, 2014
- 3) Deal, Chad, dated December 9, 2014

The hearing proceeded as follows:

EDUARDO TOPENIO, JR., Administrative Assistant to the County Clerk: Committee Chair, you have three (3) registered speakers at this time. The first one is Stacie Victorino, followed by Tony Ricci.

Committee Chair Chock: Thank you. We will have Stacie first, but I just want to make a short announcement. We are taking our public hearing now and we are planning, according to what we discussed here at the table, is to take this item early on in this meeting for those of you who are here for this item. Stacie, can I have you up, please? *Mahalo*.

There being no objections, the rules were suspended.

STACIE VICTORINO: Good morning, Councilmembers. My name is Stacie Victorino. I would just like to testify in favor of Bill No. 2545, regarding the Additional Dwelling Unit (ADU) extension. This is a good bill for us. It will allow us to build an additional dwelling unit on our three (3) acres for our children. Our three (3) adult children work hard and they work full-time jobs, yet they cannot afford to purchase land on Kaua'i to build a home on the property, so this Bill could help with that. Also, the price of real estate on Kaua'i is astronomical at this point and out of reach for most Kaua'i local families. By approving this Bill, you can help many families provide affordable housing for their *'ohana*. We all know that affordable housing is a pressing issue on Kaua'i; therefore, I humbly ask that you vote favorably for Bill No. 2545. Also, if you could please consider making this ADU bill permanent with no deadline. Thank you so much for your time and consideration.

Committee Chair Chock: Thank you. Next speaker.

Mr. Topenio: The next speaker is Tony Ricci, followed by  
Bruce Smalling.

TONY RICCI: *Aloha* Councilmembers. My name is Tony Ricci. As President of Kaua'i Raceway Park, I love the lights. I just want to state that I am hoping that we can extend this ADU situation. In my case, as I have stated before, this was part of our plan of retirement with our son being able to take over our house with his family and we can build my house. With my accident, we had to delay everything. The power is in, water is in, but financially, I cannot do it, so this would change our future drastically. I get choked up every time I think about this, but please give your consideration to extend. I do love the lights. Thank you.

Committee Chair Chock: Mr. Ricci, you have a question being posed to  
you by Councilmember Kagawa.

Councilmember Kagawa: I just have a clarifying question. How much  
acres approximately?

Mr. Ricci: We have a lot that is a one thousand four  
hundred (1,400) square feet lot in Kekaha Sunset, which were setup as lots. What  
is was when we bought this in 2000, whoever built first, which is somebody out of  
Canada, we became the ADU. That is how it all played out, and then with the  
extension. It is actually not acres, it is a regular neighborhood. That is what it is.

Councilmember Kagawa: Thank you.

Committee Chair Chock: You have one more question from  
Councilmember Yukimura.

Councilmember Yukimura: Hi, Tony. Good morning. Is this on  
agricultural land, Kekaha Sunset?

Mr. Ricci: It is an open lot. I talked to Ian Costa way  
back when all of this was coming up and saying, "Okay, I will go and do the R-1  
thing," but I could not be confirmed that I would get the R-1 rating and it would be

roughly twenty thousand dollars (\$20,000) to thirty thousand dollars (\$30,000) adventure. That is where that kind of went through.

Councilmember Yukimura: I see.

Mr. Ricci: Right now, I have my building permit. I just came from Engineering because I am trying to get this by the 15th in case there is a "monkey wrench." Everybody has been pretty fast, but it is still stuck, so I do not even know if I will get a permit in my hand by Monday. We spent another nine thousand dollars (\$9,000) to try to get new drawings and all of this done in the last two (2) months, which is happening. But again, I do not know what the outcome will be.

Councilmember Yukimura: Okay. Thank you very much.

Committee Chair Chock: Thank you.

Mr. Ricci: *Aloha* and congratulations to all of you.

Committee Chair Chock: *Mahalo*. Next speaker,

Mr. Topenio: The next speaker is Bruce Smalling, followed by F. Lee Morey.

BRUCE SMALLING: Hi, I am Bruce Smalling. This is like the third time that I have kind of faced this deadline, and each time, I have kind of gone through a bunch of machinations of getting plans set in. I have had plans pulled at one point—they were not plans that I wanted or anything, but at this point, I just kind of threw up my hands because I really cannot afford to build anything right now, but I am hoping that my daughter or my grandkids will be able to. The other lot is getting ready to be built on, so I definitely would want an ADU and I would rather it not be a guesthouse, which I think is the alternative. It just seems like this whole thing is just something that is so limited in the amount of people. It should be extended, and "indefinitely" would be nice. Whatever amount of time would be nice, but I certainly do not have it together to do it by December 14th. I am just in that situation and I would ask you to vote for this Bill.

Committee Chair Chock: Thank you. You have a question.

Councilmember Yukimura: Hi, Bruce. Thank you. What did you mean when you said it might be a guesthouse?

Mr. Smalling: I think that is what you are delegated through is it not? As I understood, if you do not get the ADU designation, then it becomes one of those situations where it is a house and a guesthouse.

Councilmember Yukimura: Is it under one (1) ownership?

Mr. Smalling: No.

Councilmember Yukimura: Okay. It is either a guesthouse or an ADU unit, not... okay. Thank you.

Mr. Smalling: I am not sure about that. That is how it was presented to me in 2006 when it was first kind of getting...

Councilmember Yukimura: Yes...

Mr. Smalling: The first deadline that I remember.

Councilmember Yukimura: The County has been a problem in terms of being clear in its laws. Thank you.

Committee Chair Chock: Thank you. Next speaker.

Mr. Topenio: The next speaker is F. Lee Morey, followed by Jesse Fukushima.

F. LEE MOREY: Good morning. Congratulations to all of you. I think we are going to have a great year and I am looking forward to it. Aside from the emotional side of someone losing the ability to build a home, there is a practical side to it too. I know you have looked at this. I just want to remind you and the general public of the financial losses that you might be looking at. We are looking at, say at six hundred seventy-five (675) or agricultural land per thousand dollars of value, and the average lot is worth three hundred fifty thousand dollars (\$350,000). That is about eight hundred thousand dollars (\$800,000) in revenue. That is just for the land alone that you would be losing every year. Then you would be losing another one hundred thirty-two million dollars (\$132,000,000) worth of construction funds to build these homes. That is a lot of money to not be spent on Kaua'i that could be spent on Kaua'i. Your infrastructure for a lot of these homes is already in place, as in Kekaha Sunset; it is there. The developer put it there. In Kakela Makai, the same situation exists where there are some agricultural lots that have not been built on that are ADUs; the infrastructure is there. You are not taxing infrastructure in many cases. Your concern about speculation—most of those guys have gotten rid of their stuff, so I do not think that is a big concern. Right now, I think we are dealing with people that genuinely did not have the capability of building within the timeline. I would also love to see you extend it indefinitely because I know how difficult getting loans are right now. If you are self-employed, it is impossible, unless you get a W-2 and you go in for a loan. You are not going to get a loan. It is not happening. That too, is changing and lightening up, so hopefully that will be different in the future. There are a lot of families that hoped to put their kids in these homes. We just need your help in realizing that it is good for the County and it is good for the individuals who have these properties. Thank you.

Committee Chair Chock: Thank you. We have a clarifying question for you from Councilmember Yukimura.

Councilmember Yukimura: Lee, thank you. I appreciate everything you said. As a realtor, I need your expertise on whether or not extending the deadline indefinitely, or the right indefinitely, would increase the speculative value of the unit.

Ms. Morey: Well, I do not think anybody that is, say for instance, wanting to do it for themselves or their family is interested in any speculative value. They have what they have. What is going to happen if they

cannot get loans now? They will be forced to sell at the end of ten (10) years if there is something financially that is not in place. Seriously, most of the individuals that were involved with speculation or involved with just flipping or whatever—providing housing is providing housing. If you have a builder who bought a lot and is going to sell the house, it is not necessarily bad because...

Councilmember Yukimura: But in our case on Kaua'i, a lot of it goes to second homes.

Ms. Morey: It does, but I think they are gone...

Councilmember Yukimura: Yes, but are they not gone because of the deadline?

Ms. Morey: No. I think they already sold their properties a long time ago. If you are speculating, you are not taking the chance that this Bill is going to go through. You are going to get rid of it long before when there is plenty of time for somebody to buy the lot and build.

Councilmember Yukimura: Well, that is right. If you extended indefinitely, there is plenty of time.

Ms. Morey: No. What I am saying to you is that I do not think that the owners now are speculators.

Councilmember Yukimura: No, I do not believe any of the owners are speculators.

Ms. Morey: Yes. The only way they would want to ever sell is if they found that they could not, but suppose you have a lot next door to an ADU. You do not want a stranger living in that house. You want your family living in that house. That is the last resort. Selling it is a speculative thing, the way I see it. Right now, I see it affecting families and individuals that had financial situations that they did not allow them to build. I know many of them.

Councilmember Yukimura: Thank you.

Ms. Morey: Either way, ten (10) years is wonderful.

Committee Chair Chock: Thank you

Ms. Morey: Thank you for that. If you could make it longer, that is even better.

Committee Chair Chock: I appreciate your testimony. Thank you.

Mr. Topenio: The next speaker is Judy Peckenpaugh, followed by Robin Murayama.

JUDY PECKENPAUGH: Morning, Council. We had property in Lāwa'i for thirty-seven (37) years and our problem has been access. It is steep. It is agriculture, but it is tough to do agriculture on property that some of it is like forty-eight (48) degrees steepness. We have been working on the driveway for

years. We probably have about five hundred thousand dollars (\$500,000) invested in the driveway. We were going to trade a little bit of the access from the owner below us and we got the foundation to the first house built and at the last minute, he signed all of the paperwork. It was peered with the County for the subdivision trade and the very last piece of paper for Land Court, he would not sign it. We had to stop and we no longer have access. Now, the plans are at the engineers. We have had it surveyed and they are creating an access on our property, which is going to be very steep. We have not gotten the houses built yet. We can build two (2) houses up there if the ADU law is passed. We have a son that lives on O'ahu. He graduated from college and living over there and renting. We would like him to be able to come back to Kaua'i to have his own place to live and get that second house built. Thank you. I hope you consider extending the law or making it permanent. I think it is really important.

Committee Chair Chock: Thank you.

Mr. Topenio: The next speaker is Robin Murayama,  
followed by Jesse Fukushima.

ROBIN MURAYAMA: *Aloha.* Good morning, Council. My name is Robin Murayama. My wife and I, Lisa, and our daughter, Kira, and son, Kasen, reside in Niumalu. Our property is not agricultural. Our property is urban/open. I am a fourth generation Niumalu resident. My kids are fifth generation. We have owned our property since 2000. We come before you folks today to testify in favor of Bill No. 2545 and hopefully with the intent of a permanent, no deadline where our kids can build. Literally, the intent for our place is for our kids. Like I said, my daughter is eight (8) and my son is five (5). For us, right now is not the time that we are considering to build. Literally for us, obviously, we are fourth and fifth generation Niumalu residents—the property with the ADU is not intended to be for speculative reasons. It is for them for the future. That is what I feel strongly about and that is why we are here today. I hope that this sunset becomes extended where there is no deadline. Thank you for your consideration.

Committee Chair Chock: Next speaker.

Mr. Topenio: The next speaker is Michael Andrade.

MICHAEL ANDRADE: Good morning. My name is Michael Andrade. I live in Lāwa'i Homesteads land, up in Akemama Road on family property. I would like this ADU to be permanent, so when my daughter comes home, she has a place to build. That is all I have to say. Thank you.

Committee Chair Chock: Thank you.

Mr. Topenio: Our final registered speaker is Jesse Fukushima.

JESSE FUKUSHIMA: Good morning, Honorable Councilmembers. My name is Jesse Fukushima. As you have heard from the previous speakers, a good majority of them, do reside in a property and they are asking for permanent status for their ADU. I think overall, this concept has been a very good concept. It has been on the books for twenty-five (25) years. Past councils and mayors have given their seals of approval and it is not only with this particular land category,

but it also has extended itself out to even the residential land category. You see the ADU concept thriving very well. For the most part, it pertains a lot to families; people that live here or who have made their homes here. I think overall, like I said, it is a good concept and I am hoping that you folks with fully consider making it permanent because this is... however small the numbers. There is about three hundred thirty (330) to three hundred fifty (350) of us who have gone through the clearance forms. It is a small percentage to try to address the housing situation that we do have on this island. Thank you.

Committee Chair Chock: Thank you. Is there anyone else registered to speak?

Mr. Topenio: Committee Chair, that is it. We also have three (3) written testimonies that we received.

Committee Chair Chock: Thank you. That has been distributed. Would anyone else like to testify on this item at this time? Please come forward. We will start with the gentleman in the back, and we will go to LaVerne next. Hold on one second. If you do want to testify, it would help us in our process if you sign up ahead of time. Thank you. Go ahead.

JOHN BURGER: My name is John Burger. I reside at Hono Ohala Place, which is part of a Kapa'a subdivision. We bought our home in 1990 with the intent of moving to Kaua'i and building a hydroponic greenhouse on the agricultural land. We looked at different properties and one of the advantages that we saw for the future was an opportunity to build a second home when we retired and our children, now adults, would be able to take on the "big house." That was the plan. I found out how much better (inaudible) farmer with a hydroponic greenhouse, which commercial structure I built, I operated for three (3) years. It was either a divorce or find another job. We have to make a living, and I did. I got into real estate as a desperation act. This was in 1998. The reason I bring that up is because I have a license and it is now active in real estate as an effort to try and supplement my agricultural income, which was very minimal. While I was there in that line of work, I also discovered that the economy is a very depress for real estate. During the period from 1998 to 2006, when I had my license active, I saw the real estate go (inaudible) the bottom when I was Housing and Urban Development (HUD) guy. I had the lowest income properties listed of anybody on this island in real estate at the time because I was new at it. Then I saw the exponential growth of the value of real estate on this island and the speculation. I know what drove the decisions that started this Ordinance in the first place, which was fear of speculation, as JoAnn has pointed out already. I concur completely with everyone in this audience who has spoken already that this is not a speculative issue right now. The people who stuck through this are not speculators; they are people who live on this island that have plans for their children, just like I have as a mainland guy with a local guy who has five (5) generations on the island. We all have the same value system. It is not speculation. If you want to speculate, you got out of this a long time ago. Having sold real estate, I have seen that speculation come and go. We are past that point. This thing should be extended indefinitely because many of these people do have children who are still not adults and will not be able to afford to do anything within the next ten (10) years for all kinds of reasons. There is such a small percentage of folks here and the environmental impact, which is my specialty field, of these additional units, because of the double septic systems in large parcels in most cases— many of them on many acres are not

going to have anywhere near the impact that these cesspool systems have in these large money zoned areas right now, in terms of groundwater quality or infrastructure requirements to build to support an infrastructure. It is not going to put a burden on the environment here on Kaua'i to have these folks be able to build a self-included, additional dwelling unit.

Committee Chair Chock: Mr. Burger, your time is up. Thank you.

Mr. Burger: Thank you.

Mr. Topenio: Committee Chair, you have more registered speakers. The first speaker is LaVerne Bishop, followed by Diana Hayden.

LAVERNE BISHOP: Good morning, Honorable Chair, Vice Chair, and Kaua'i County Council Members. My name is LaVerne Bishop and I have owned a home in Kalāheo Homesteads since 1983. I hold an ADU and I am requesting that the ADU not sunset and that a fee not be attached. I know that affordable housing is an issue that all of you feel is elemental to the quality of life going forward in the twenty-first century here on Kaua'i. I think this is a creative solution that was advanced twenty-five (25) years ago. There are a few citizens that are impacted. I think we have heard excellent testimony about the non-speculative nature of his group. We are looking to pass this to our kids, so they can come back. If they are able to get a loan, they can build a house. What I am interested in is really focusing the attention on the need for affordable housing and looking at this as one way to move ahead creatively with addressing the larger issue. I worked with young people who will never be able to get involved in housing. If we do not start addressing this in a very creative and fundamental way— if their families have property, if we could do something similar to this moving forward rather than stopping it or extending it only to a few people— I think it is time for us to look at that as well, so I am here to support the extension permanently without a fee, but also encourage you to look at this and other creative ways to provide affordable housing for our families here. Thank you.

Committee Chair Chock: Thank you very much. Next speaker.

Mr. Topenio: The next speaker is Diana Hayden, followed by Chris Hayden.

DIANA HAYDEN: Good morning. My situation...

Committee Chair Chock: Can you please state your name as well?

Ms. Hayden: "Diana Hayden."

Committee Chair Chock: Thank you.

Ms. Hayden: We have owned property for at least twenty-five (25) years and the ADU came into effect. We were able to divide a portion and help our oldest son build. Then of course, we have had some very serious financial issues with the world and with this island. Consequently, my husband and I have not been able to move ahead and build our home. So we were good parents, we put our son before us and allowed him to have his home. We are in the position now that we would like to have this extended— hopefully



indefinitely, to give us time and also not to have a fee. Originally, if any of you were aware when we all signed up for that, there was no fee imposed. But then I know that the County needs money and this is maybe a source of revenue; however, I think the people that have the property should not be imposed on any more restrictions or fee. I am just asking to extend it. Hopefully indefinitely to give us time. Also, (inaudible).

Committee Chair Chock: Thank you. Next speaker.

Mr. Topenio: The last registered speaker is Chris Hayden.

CHRIS HAYDEN: Excuse me, please. This is a really emotional issue. My name is Christopher Hayden. Chairman and Councilmen, thank you for listening to us. I have been in conversations with a lot of the people because of this petition that went out in the beginning of the year, asking people how they feel about it. If they want to sign a petition and request this be continued on. We gathered many petitions that people said, "Yes, we would like to have this." It is because none of us has a crystal ball, so we cannot predict what might happen in the future. We can be hopeful, but along the way, time goes pretty fast, so these seven (7) years has gone real fast and now the ten (10) years is up now. In the Planning Department meeting, which I have attended with Jesse and a few other folks, it appears that in their wisdom, they feel like ten (10) years is good, "Let us keep it going." Please note that it was mentioned that if after these ten (10) years, it will seriously be considered to be extended again because of the unknown in the future. As far as the fee, it appears that there have been no fees in the past, but it was questioned... it is on your Bill to have the fees. I have been communicating with a lot of people that are in this situation and it appears that there are many older people that do not have the money, so they tell me, "Look, if I have to pay a fee, I am going to opt out. I do not have the money. My family does not have the money, so I am going to have to opt out and forgo our dreams." People are at a situation where sure they would like to build them, but they are not sure if they can and they are not sure if they can pass it on. They are also not sure about the financial situation and huge money that they might have to come up with. There is a lot of concern— excuse me for crying. I apologize. I understand that we have to pay for the records to be in order to proceed and I would hope that you consider that each person that has their certificate be recorded within your system and that they have their own, so when it is time for them to build, they can present their certificate. If you could consider that maybe instead of five hundred dollars (\$500), if it could be less, whatever the budget will allow. I think people would appreciate it. We thank you very much from the bottom of our hearts to present this Bill for ten (10) years more. Thank you.

Committee Chair Chock: Thank you, Mr. Hayden. Is the light working?

CODIE K. YAMAUCHI, Council Services Assistant: It is working. I accidentally pressed something. Sorry.

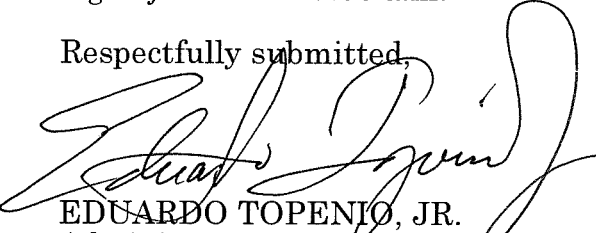
Committee Chair Chock: Okay. Not a problem. It is our first round everyone. Please be patient with us. Would anyone else like to testify on this item? Was that the last registered speaker?

Mr. Topenio: Yes, Committee Chair.

Committee Chair Chock: Okay. With that, I will pass it on to Councilmember Kaneshiro for the next public hearing. Thank you.

The meeting was called back to order, and there being no further testimony on this matter, the public hearing adjourned at 9:06 a.m.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Eduardo Topenio, Jr.", written over the typed name.

EDUARDO TOPENIO, JR.

Administrative Assistant to the County Clerk

:cy